In sum, the ILECs' claims that some CLECs have purchased switches from alternative suppliers and that switches can be used to serve large geographic areas in no way indicate that CLECs are no longer impaired in their ability to serve customers without access to ILEC switches. Until competitively-supplied switches are interchangeable with ILEC switches, a lack of access to the switches that are already integrated into the efficient, automated, and ubiquitous ILEC networks will impair the ability of CLECs to provide telecommunications services.

B. CLECs Require Access to ILEC Switch Routing Tables.

Ameritech asserts that even if the Commission were to include switching on its list of mandatory UNEs, the Commission should not require ILECs to provide competitors with access to their routing tables. 136/ This is so, Ameritech asserts, because routing tables are proprietary and because access to routing tables is not "necessary." 137/

In Qwest's view, the switch routing tables are not "proprietary." We leave it to other parties to address Ameritech's specific claims in that regard. But, assuming, for the sake of argument, that routing tables are proprietary, routing tables clearly are necessary to a CLEC's ability to use unbundled ILEC switching and thus to provide telecommunications services. This is so because a lack of access to routing tables would prevent CLECs from using the functionality of the

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136/ Ameritech Comments at 84.

137/ Ameritech Comments at 84.

unbundled ILEC switch to provide the telecommunications services they seek to offer.

In particular, a lack of access to routing tables would prevent CLECs from using unbundled switching in conjunction with the shared transport UNE. Ameritech states that "any reasonably efficient competitor could develop its own routing instructions, which then could be programmed into the ILEC's switch to direct the routing of the CLEC's traffic." 138/ ILEC routing tables, however, are designed to route traffic in accordance with the way each particular ILEC has engineered its network. Since CLECs clearly do not have access to the ILECs' network engineering information, it is nonsensical for Ameritech to assert that CLECs could independently develop workable routing instructions. The only way for a CLEC's traffic to be commingled with an ILEC's traffic and sent over the same efficient ILEC transport matrix is for the CLEC to use the same routing instructions that the ILEC uses. Without those routing instructions, or tables, the CLEC could wind up dumping its traffic into the ILEC transport network in a way that the ILEC network would not be able to handle.

Thus, without access to ILEC routing tables, CLECs will not be able to use the functionality of the unbundled switching UNE and provide services using shared transport. Even if routing tables were considered proprietary, therefore, ILEC routing tables clearly satisfy both the "impair" and the "necessary" standards

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138/ Ameritech Comments at 84.

of Section 251(d)(2), and should be included in the ILECs' obligation to provide competitors with unbundled switching.

C. CLECs Would Be Impaired Without Access to Packet Switching.

For the same reasons that CLECs would be impaired by a lack of access to circuit switching, CLECs would be impaired by a lack of access to packet switching. As made clear in Qwest's comments, an inability to obtain access to ILEC packet switches would significantly impair a CLEC's ability to provide advanced services. 139/

Packet switching is an essential capability in reaching the local customer using packet technology, just as packet transport is. Packet technology, which is featured in the networks of Qwest and many others, is fast replacing circuit-switched technology. Competitive providers of advanced services will need access to ILEC packet switching capabilities in order to provide advance services on a broad basis. A number of parties, including the GSA, urge the Commission to make this a mandatory network element. 140/ There is no wholesale market for packet switching, moreover. As with other network elements, competitors should not be barred from providing advanced services simply because they have not yet deployed a duplicate local packet network.

139/ Qwest Comments at 72-73.

140/ GSA at 6; AT&T at --- ; MCI WorldCom at ---; Sprint at -----.

X. CLECS WOULD BE IMPAIRED WITHOUT ACCESS TO UNBUNDLED INTEROFFICE TRANSPORT.

A. Dedicated Transport

The ILECs argue strenuously that because some CLECs have deployed some interoffice transport facilities, dedicated interoffice transmission facilities need no longer be a mandatory network element, at least in to those areas with a high percentage of central offices with collocated CLECs. 141/ As discussed below, the ILECs make several errors in their analysis which invalidates the factual showing of lack of impairment that they have attempted to make.

The record shows that CLECs would indeed be impaired without access to ILEC dedicated transport on a ubiquitous basis because they do not have satisfactory alternatives. As ALTS points out, "in the vast majority of cases, ILEC unbundled transport is the only readily available option for meeting competitors' interoffice transport needs." 142/ The record is replete with similar statements from CLECs. 143/

The ILECs' data about CLEC collocation and transport facilities construction does show, however, that there may be, at some point, a wholesale market for dedicated transport in certain geographic areas. For example, when

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141/ See, e.g., GTE at 59-60; Bell Atlantic at 31; SBC at 47; US West at 51; see also Foreman Declaration at 2-4; UNE Fact Report at Section II, 7-9.

142/ ALTS at 51.

143/ See, e.g., CoreComm at 28; KMC Telecom at 14; Allegiance Telecom at 18.

duplicate CLEC facilities reach every central office in an MTA, and there are CLECs providing competitive ubiquitous transport offerings, then the Commission may find it appropriate to take dedicated transport off the mandatory list in that MTA.

In the meantime, however, competitors would be impaired without access to the ILECs' dedicated transport. Significantly, most of the state commissions that made a recommendation regarding this issue agreed that it should remain a mandatory element. 144/ In addition, the very CLECs that, according to the ILECs, have constructed so many dedicated transport facilities are emphatic in their belief that they would be impaired without access to this network element from the ILEC. 145/

Sprint's experience in purchasing competitive access transport is instructive. It demonstrates that while a wholesale market could develop for dedicated transport, the level of competitive investment in interoffice transport facilities is not yet sufficiently ubiquitous to provide competitors with a real alternative to the ILEC:

> [I]n all but New York, the CAPs [competitive access providers] were not collocated in enough ILEC offices to make it practical to use them for any dedicated switched transport. Even in New York, which is, because of its customer and traffic density, perhaps the most conducive LATA in the

144/ See, e.g., Texas PUC at 14; Kentucky PSC at 2; Illinois CC at 13; Connecticut DPUC at 4; Iowa UB at 6-7; Oregon PUC at 2; Florida PSC at 11.

145/ See, e.g., e.spire/Intermedia at 24-26; AT&T 111-125; MCI WorldCom at 64-67; ALTS at 51.

> country to the development of transport competition, Sprint, out of necessity, continued to use the ILEC extensively for switched transport because the CLEC was not collocated in all ILEC offices and hence could not offer a ubiquitous alternative, even in this high-density LATA. 146/

The best evidence that the current deployment of transport is not adequate to support a wholesale product that could substitute for ILEC dedicated transport is the market share data from the switched access market. The following table 147/ shows that despite the deployment of CLEC interoffice transport facilities, CLECs have not been able to win significant shares of the switched transport market, even though competition in this market has been permitted for several years prior to the 1996 Act:

ILEC	ILEC Market Share
Ameritech	98.1%
Bell Atlantic	90.0%
BellSouth	99.5%
Pacific	65.9%
Nevada	100.0%
SWBT	98.8%
U S West	94.8%
GTE	90.2%

146/ Sprint at 32-33 and Appendix E (Declaration of Robert W. Runke) at paras. 3-6.

147/ Source: 1998 Annual Access Filing (Data for Calendar Year 1997). This chart compares Collocated Interconnection Minutes to Total Interconnection Minutes

Lifting the transport unbundling requirement would only slow the development of a competitive wholesale market for interoffice transport. 148/

The tests proposed for this element by the ILECs are ludicrous. GTE, for example, would make dedicated transport unavailable in any central office serving more that 15,000 access lines. 149/ Ameritech would make it unavailable in any central office servicing 40,000 or more access lines if there is a collocation arrangement in that central office; for smaller central offices with collocation arrangements, dedicated transport would be unavailable if competitive transport facilities had been deployed by a competitor in the wire center serving areas. 150/

A close examination of the data upon which the ILECs rely reveals the thinness of their claims that CLECs are not impaired without access to ILEC transport. The ILECs assume that the existence of a collocation arrangement in a central office means that some CLEC is likely to have installed interoffice transport to that central office. They jump from that shaky assumption to another, more pernicious, assumption: that if one CLEC has put in transport, others should have to as well. Some ILECs go even further, relying on data about the *future* number of collocators as evidence of alternative sources of interoffice transport, apparently to justify a lack of impairment conclusion *today*.

148/ ALTS at 58.

149/ GTE at 10, 59-63.

150/ Ameritech at 88.

The number of collocators and orders for collocation say nothing about the economics of constructing alternate facilities. The ILEC data simply shows that there are some CLECs that have constructed interoffice facilities, which obviously will end in collocation arrangements. Even the most dense areas, where the percentage of end offices where a CLEC has constructed interoffice transport is highest, still fall short of ubiquity by the ILECs' own admission. 151/

The ILECs' argument, in its essence, is that if a CLEC is collocated (or has requested collocation), that CLEC is not impaired because that CLEC could build its own transport. 152/ The ILECs base this argument on the unsupported view that a CLEC *could* construct alternative interoffice transport facilities where none currently exist, and therefore *should*. They acknowledge that this means that in some cases, there will be no existing CLEC facilities serving some of the central offices, but expect that CLECs will simply construct those facilities. 153/ Rather than accepting that Congress required ILECs to make their facilities available to competitors on an unbundled basis, ILECs now read the Act to say that competitors must build their own facilities before they can compete for certain customers.

This is not an impairment standard at all. The ILECs "go build it yourself" test ignores the fact that many CLECs do not have the volumes needed to justify construction of interoffice transport to a particular central office. ALTS,

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151/ UNE Fact Report at Section II, 6-22.

152/ See Ameritech at 91-94.

153/ See, e.g., Ameritech at 88, note 223.

whose members would be most likely to construct alternative transport and to provide competitive interoffice transport, states that

> most CLECs do not have the customer base, traffic volumes, and ability to raise capital necessary to begin duplicating the ILEC transport network (even in discrete segments and geographic areas) for their own use or for wholesale purposes in any significant way. **154/**

The delay associated with being forced to construct facilities also is a serious deterrent to competition. **155/** When a key customer is up for grabs, the inability to install and deliver service immediately can be an insurmountable disadvantage. The ILECs, because of their legal monopolies, have in place ubiquitous networks, including the transport that connects all their switches -- switches that competitors must be able to reach on a ubiquitous basis. **156/** Self-provisioning is not always feasible, even if it is cost-justifiable (which, in many cases, it will not be). The lack of collocation space, rights-of-way, agreements with municipalities, and so on can be insuperable obstacles. **157/**

In addition to relying on the existence of certain CLEC transport facilities, the ILECs point to the existence of scattered non-ILEC transport facilities, including those using wireless technologies and power company sources,

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154/ ALTS at 57 (footnote omitted).

155/ See, e.g., AT&T at 114, Beans Affidavit at ¶ 5.

156/ See AT&T at 116.

157/ See, e.g., AT&T at 114-121and Beans Affidavit at ¶ 5.

as evidence that CLECs can compete without access to ILEC transport. 158/ They make no attempt to show that these other sources go to the right places, have the right transmission characteristics, or are priced in a way that makes it economically justifiable to use an alternative source of supply. Without such evidence, the Commission cannot conclude that CLECs will not be impaired if they cannot turn to the ILEC for dedicated transport.

The ILECs' data on tha availability of alternative transport facilities is also suspect. GTE, for example, includes Qwest as an alternative source of interoffice transport, even though Qwest has *no* interoffice transport facilities, for itself or for others. 159/ Similarly, the UNE Fact Report lists Qwest along with others as alternative sources of dark fiber (which the ILECs contend would allow CLECs to self-provide dedicated transport). 160/ Qwest has no dark fiber installed on an interoffice basis, either. These inaccuracies raise serious doubts about the validity of the ILECs' other data purporting to show the construction of vast duplicate local exchange network facilities.

In addition, dedicated transport remains necessary because it is an essential input in the competitive transport offerings of others. No CLEC has transport facilities connecting every end office, even in the most dense metropolitan

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158/ See, e.g., GTE at 62-63; UNE Fact Report at Section II, 16; Ameritech at 88-91.

159/ GTE at 61.

160/ UNE Fact Report at II-4 to II-5.

areas. If a CLEC were to develop a competitive dedicated transport alternative, it could not match the ILECs' ubiquitous offerings unless the CLEC could purchase the ILECs' dedicated transport as an input. **161**/ As AT&T put it, access to dedicated transport as a UNE actually will promote the development of alternative transport networks, because it is "an essential bridge for CLECs to evolve from a network element based to facilities based competition." **162**/

As several CLECs also noted, the dedicated transport services available from competitive sources are not always of the same speed, quality, and reliability. **163**/ As ALTS points out, "[a]bsent such high-speed transport [DS-1, DS-3, and OC-n], CLECs are denied important economies of scale in routing their traffic, and are unable to compete with the SONET-speed services offered by the ILECs." **164**/

The ILECs also ignore the enormous difficulties of purchasing dedicated transport from multiple non-ubiquitous vendors, even assuming that these vendors existed. As Qwest noted in its initial comments, the difficulties of dealing with multiple vendors of dedicated transport are an additional source of impairment. **165**/ As Sprint has learned from its experience in dealing with

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161/ See Sprint at 33.

162/ AT&T at 112.

163/ See, e.g., Sprint at 33, Appendix E (Declaration of Robert W. Runke) at paras. 5-8.

164/ ALTS at 59.

165/ Qwest at 77; see Sprint at 33.

multiple special access vendors, carriers incur "additional costs . . . because of the need to manage multiple vendor operations." 166/ For example, as Sprint noted, "[t]he repair time when the facility was part ILEC and part CAP is nearly three times as long as when the facility is entirely on the network of the CAP." 167/

The ILECs dismiss the FCC's conclusions in 1996 that support a finding of impairment. 168/ Ameritech states, for example, that the fact that access to ILECs' interoffice transmission facilities will "improve competitors' ability to design efficient networks or combine their own switches with unbundled loops is irrelevant." 169/ This statement strikes at the heart of what Congress was intending to accomplish in requiring ILECs to make their networks available to competitors. If all that Congress hoped to accomplish was to permit entrants to compete by building their own facilities, all that would have been necessary was to strike down the ILECs' legal monopolies. But, as the Commission recognized in 1996, the purpose of the UNE provisions was to enable competitors to *succeed* in competing with the incumbents by *sharing* in the efficiencies of the ILEC's ubiquitous network -- a network that the ILECs possess by virtue of their legal monopolies. No entrant could hope to duplicate those efficiencies itself -- and thus, without sharing in them, could not hope to compete with the ILEC.

166/ Sprint Exhibit E, Declaration of Robert Runke at para. 7.

167/ Sprint at 34.

168/ See Qwest at 135, citing Local Competition Order, 11 FCC Rcd at 15718, ¶ 441.

169/ Ameritech at 87.

B. Shared Transport

Most of the ILECs appear not to contest the correctness of classifying shared interoffice transport as a mandatory network element. 170/ Ameritech, however, which has long opposed providing shared transport as a network element, continues to resist this obligation, despite the detailed findings of need for this element (and therefore obvious impairment) made by the Commission in its 1997 Shared Transport Order. 171/

Instead of addressing impairment, Ameritech attacks this network element on other grounds. Ameritech argues, for example, that shared transport cannot be provided as a service separate from switching, and therefore cannot be "unbundled," and, therefore, cannot be considered an unbundled network element. 172/ This syllogism is obviously flawed. First, whether or not an element

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170/ See, e.g., USTA, SBC, BellSouth. To the extent these ILECs implicitly include shared transport as a subset of interoffice transmission generally, they fail completely to address the differences between the two elements, which the FCC clearly recognized in the Shared Transport Order. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket Nos. 96-98, 95-185, Third Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 97-295, released August 18, 1997. aff'd, Southwestern Bell Tel. Co. v. FCC, Case. No. 97-3389 (8th Cir., August 10, 1998), vacated and remanded sub nom. Ameritech v. FCC, S.Ct No. 98-1381, _____ U.S. _____ (June 1, 1999) ("Shared Transport Order"). The Supreme Court's recent order vacating the Shared Transport Order in no way calls into question the FCC's factual findings in that order (which the Eighth Circuit affirmed). Rather, the Supreme Court's decision reflected the fact that shared transport is one of the network elements in the Rule 319 list, which the FCC must evaluate according to the standard it adopts in this proceeding under Section 251(d)(2).

171/ Id. US West also opposes the availability of shared transport, but without specificity. US West at 53-54.

172/ Ameritech at 95.

can be unbundled as a service is irrelevant, if it constitutes a separate functionality and can be swapped out with another (here dedicated transport or self-supplied transport). Second, while it is true that shared transport must be purchased in conjunction with another network element (switching), switching need not be purchased with shared transport, just as it need not be purchased with the ILEC loop.

Ameritech also argues, bootstrap fashion, that it should not have to provide access to switch routing tables, and therefore should not have to provide access to shared transport, which is provided via the routing tables. 173/ Ameritech has it backwards. Competitors would be impaired without access to shared transport and unbundled switching; therefore the switch routing tables must be provided (even if proprietary, which they are not) because use of those routing tables is necessary in order to use the switching and transport network elements. Wherever switching is available (and it should be available everywhere under the impairment test), shared transport would be available.

Finally, Ameritech relies on an economic analysis purporting to show that competitors would not be impaired if they had to employ dedicated, rather than shared transport. 174/ The study makes a number of assumptions, any of which are likely to be inaccurate when applied to a particular CLEC. The study also does not even attempt to compare the cost-based rate for shared transport with the rate

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173/ Ameritech at 95-96

174/ Ameritech at 98 and Attachment C.

produced by the study. Instead, Ameritech compares the study rate to the wholesale and retail usage rates, which are not relevant. More important is the real world test of what happens when shared transport is unavailable. Before the Eighth Circuit struck down the FCC's combination rules, Ameritech used its refusal to provide shared transport as a way to block competitors' ability, as a practical matter, to use combinations of elements (UNE-P) to compete in Illinois. That refusal to provide shared transport was effective in blocking competition because the cost of dedicated transport to reach all the end offices in Illinois was and is prohibitive.

In sum, Ameritech, alone among the ILECs, is dragging in all the arguments it used in its unsuccessful attempt to defeat its duty to provide shared transport in 1997. The FCC's Shared Transport Order is replete with evidence of impairment, as is the record in this proceeding. **175/** The Commission should include it as a mandatory network element on a ubiquitous basis.

C. Packet Transport

For all the same reasons that CLECs require access to the ILECs' dedicated interoffice transport, they need access to packet transport as well. As discussed above, the Act's unbundled network element provisions recognize no distinctions on the basis of the nature of the technology or when it was installed. **176/** As many commenters pointed out, access to packet transport is an

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175/ See, e.g. MCI/WorldCom at 62-64.

176/ See Section IX, above. See also Qwest at 58-59.

important element in being able to compete effectively in the provision of advanced services. Qwest, like other carriers interested in providing advanced services on a broad geographic basis, would be impaired without access to the ILECs' packet transport, just as it would without access to the ILEC's circuit-switched transport. The efficiencies and scale economies of the ILEC's packet networks could not easily be replicated by carriers that lack the ILECs' ubiquity and volume. Nor is Qwest aware of a wholesale supply of packet transport that would alleviate Qwest's regarding the need to purchase such transport from ILECs. Thus, packet transport must be a network element just like other forms of local transport.

XI. CLECS WOULD BE IMPAIRED WITHOUT ACCESS TO ILEC OPERATOR SERVICES AND DIRECTORY ASSISTANCE.

As the ILECs stress in their comments, 177/ there are some CLECs today that are providing (or are interested in providing) their own operator services and directory assistance services ("OS/DA"). 178/ There also are companies, such as Teltrust, that are providing (or are interested in providing) OS/DA services to other CLECs. The ILECs conclude from this that CLECs are no longer impaired by a lack of access to ILEC OS/DA and directory databases.

Qwest would agree that a nascent wholesale market appears to be developing for OS/DA services, and OS/DA services may be a candidate for removal from the mandatory UNE list in the near future. The ILECs are incorrect, however,

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177/ SBC at 58-59; GTE at 49-54; Ameritech at 106-114.

178/ See also Qwest Comments at 87-88.

in suggesting that CLECs would not be impaired by a lack of access, at least for now, to ILEC OS/DA services. The ILECs also are incorrect in suggesting that CLECs would not be impaired by a lack of access to ILEC directory databases. As at least eight of the eleven commenting states have stated, 179/ OS/DA and directory databases must remain on the Rule 319 list. The ILECs overlook a fundamental obstacle facing CLECs that would like to obtain OS/DA services or directory databases from alternative sources: The OS/DA services and databases available from non-ILEC sources cannot be used with a level of quality, functionality, ease of operation, speed to market, or price comparable to that availalable with ILEC OS/DA and directory databases. Put differently, competitive OS/DA services and directory databases are not yet "interchangeable" with ILEC OS/DA services and directory databases. As discussed below, MCI, Teltrust, and AT&T, among others, demonstrate the fundamental problems with alternatively-supplied OS/DA and directory databases.

For these reasons, CLECs would be impaired without access to ILEC OS/DA services and directory databases. The impediments to achieving interchangeability in OS/DA services (although not directory databases), however, appear largely within the ILECs' power to remedy.

179/ Illinois Commerce Commission at 1, 11-14; Kentucky Public Service Commission Comments at 2, ¶¶ 2, 3; Iowa Utilities Board at 6-7; Connecticut Department of Public Utility Control Comments at 4, 5; Washington Utilities Board at 4, 14, Texas Public Utility Commission Comments at 14, New York Public Service Commission Comments at 2, 4; Florida PSC at 7; see also California Public Utilities Commission Comments at 7 (regarding directory listings).

A. Lack of Access to Updated, Accurate Database Information.

Both CLECs and alternative suppliers of OS/DA services make clear that ILEC directory databases are currently the only source from which to obtain up-to-date, accurate information. Teltrust, an alternative source of OS/DA services, explains that non-ILEC database information sources are generally out-of-date and full of inaccuracies. Teltrust states that "[i]n today's highly mobile society, printed directories are out-of-date by the time they are released." 180/ Teltrust also explains that "Internet directories, which often rely on a consumer's voluntary submission of updated information to the provider, are likely to contain old listings and other inaccuracies." 181/ Indeed, MCI states that such alternative sources "tend to have twice as many inaccuracies" as ILEC databases. 182/ MCI also states that alternative sources of database information are often incomplete. 183/ By contrast, the ILECs' ubiquitous networks and unique market positions give them "unparalleled access to the necessary information for the vast majority of all telephone customers," and the ILECs update their databases continuously. 184/

180/ Teltrust Comments at 9.

181/ Teltrust Comments at 9-10.

182/ MCI Comments at 72.

183/ MCI Comments at 72.

184/ Teltrust Comments at 10.

Teltrust explains that customers will not tolerate OS/DA services that provide inaccurate information or that do not have the information a customer seeks. 185/

B. Prohibitive Costs and the Compatible System Requirement for "Per-Dip" Access.

Access to the ILECs' directory databases as tariffed offerings does not solve a CLEC's OS/DA problems. This is so, for example, because purchasing "read only" or "per dip" access to ILEC directory databases, or purchasing access to entire ILEC databases and then incorporating the information into a CLEC's own databases, is prohibitively expensive. 186/ For one-time purchases of directory listings, ILECs impose substantial charges per customer listing. For subscriptions to directory listings, ILECs impose large initial access fees, per-query access fees, and monthly update fees. 187/ Furthermore, since not all ILECs offer access on a subscription basis, CLECs cannot always obtain database updates. 188/

In addition, MCI Worldcom explains that CLECs that purchase, as tariffed offerings, access to the ILECs' directory databases on a "per-dip" basis must develop or purchase a directory assistance system that is compatible with the ILECs' systems. 189/ Moreover, such CLECs must upgrade or purchase new

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185/ Teltrust Comments at 10.

186/ Teltrust Comments at 8.

187/ Teltrust Comments at 9.

188/ See Teltrust Comments at 9.

189/ MCI Comments at 72.

systems each time the ILEC changes its system or purchases a new system. 190/ This "'compatible system" requirement imposes substantial costs on CLECs. This requirement also holds CLECs hostage to the ILECs' search methods and strategies because if CLECs develop new search methods or services, they must share them with the ILEC. 191/

C. The Costs to Small CLECs of Constructing OS/DA Platforms and Transporting Traffic to Them.

For small CLECs, the unit costs of constructing an OS/DA platform and of transporting small levels of traffic back to these platforms are be considerably higher than those of an ILEC with large market penetration. 192/ As a result, small CLECs cannot provide their own OS/DA in competition with the ILECs. MCI adds that this problem would exist even if, as discussed below, the ILECs offered customized routing using a signaling protocol that the CLEC networks could use. 193/

D. Lack of Access to Customized Routing and the Inability to Create Line Class Codes.

For a CLEC that uses ILEC switching to provide OS/DA services, MCI explains that the CLEC must be able to route directory assistance calls from the ILEC switch to the CLEC platform. Most CLECs route calls using the equal access

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190/ MCI Comments at 72.

191/ MCI Comments at 72.

192/ MCI Comments at 74.

193/ MCI Comments at 74.

Feature Group D ("FGD") signaling protocol. 194/ The ILECs, however, route calls using an outdated mass signaling protocol that most CLEC networks cannot use. The ILECs also refuse to program their switches to allow FGD routing to CLEC OS/DA platforms. 195/ To use the ILECs' legacy signaling protocol, most CLECs would have to either deploy new customized operator platforms or modify their existing platforms, both of which impose substantial costs. 196/ As a result, the lack of access to customized routing using a signaling protocol that CLECs can use makes it impossible for CLECs to use their own OS/DA platforms. 197/

A CLEC that uses ILEC switching also must be able to create line class codes in the ILEC local switch in order to use its own or another provider's OS/DA in conjunction with local switching. 198/ The ILECs could make CLEC creation of line class codes possible. To date, however, operational systems like these, that would enable CLECs to use alternative OS/DA services, have not been implemented. 199/ Accordingly, CLECs using unbundled local switching cannot yet substitute alternative OS/DA for the ILECs' OS/DA.

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194/ MCI Comments at 73.

195/ Id.

196/ Id.

197/ Id.

198/ Qwest Comments at 88

199/ Qwest Comments at 88.

As noted above, the problems listed here with alternatively-provided OS/DA services and directory databases are all correctable problems. To date, however, they mean that alternatively-supplied OS/DA services and directory databases are not interchangeable with ILEC OS/DA services and directory databases. Until these problems are resolved, a lack of access to ILEC OS/DA will impair the ability of CLECs to offer OS/DA services.

XII. CLECS WOULD BE IMPAIRED WITHOUT ACCESS TO ILEC DARK FIBER.

Not surprisingly, the ILECs also assert that CLECs should not have access to ILEC dark fiber as an unbundled network element. They argue, as an initial matter, that dark fiber is not a "network element" within the meaning of Section 3(29) of the Act. 200/ Specifically, they assert that dark fiber is not a "network element" because it is not a facility that is "used in the provision of a telecommunications service." 201/ This is so, they contend, because dark fiber consists of "strands of glass in the ground that are unattached to the requisite electronics and carry no signals." 202/

As stated in Qwest's initial comments, however, at least three federal courts have expressly rejected this argument. 203/ In so doing, one court stated

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200/ 47 U.S.C. § 153(29); SBC Comments at 51; GTE Comments at 80.

201/ SBC Comments at 51-52, GTE Comments at 80-81.

202/ GTE Comments at 80.

203/ Qwest Comments at 88, citing, E.g., MCI Telecommunications Corp. v. BellSouth Telecommunications, Inc., 7 F.Supp.2d 674, 680 (E.D.N.C. 1998);

simply that the ILEC's "extremely narrow interpretation is not supported by § 153(29) of the Act. **204**/ Another court explained that dark fiber is, in fact, a "network element" because:

> [a]lthough dark fiber is not presently being used to provide telecommunications service, the same argument could be made with regard to switching or other excess capacity. This fiber is not just sitting in a warehouse, but is in the field ready for use once the appropriate electronics are installed on either end." **205**/

Thus, there is no question that dark fiber constitutes a "network element" under Section 153(29).

The ILECs also argue, however, that even if dark fiber qualifies as a network element, CLECs would not be impaired by a lack of access to ILEC dark fiber because there are many alternative sources of dark fiber. **206**/ The data the ILECs provide on this point, however, is misleading. For example, SBC and GTE state that Qwest is a "major supplier of dark fiber." **207**/ Qwest, however, is *not* a

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Southwestern Bell Tel. Co. v. AT&T Communications of the Southwest, Inc., 1998 WL 6577717, *6 (W.D. Tex. 1998) (affirming the same finding by the Texas Public Utility Commission); US West Communications, Inc. v. AT&T Communications of the Pacific Northwest, Inc., 31 F.Supp.2d 839, 854 (D.Or. 1998).

204/ Southwestern Bell Telephone Company, 1998 WL 657717, *6.

205/ US West Communications, 31 F.Supp.2d at 854.

206/ US West Comments at 54; SBC Comments at 54; GTE Comments at 82.

207/ SBC Comments at 54, GTE Comments at 82.

wholesale supplier of *local* dark fiber. Qwest leases dark fiber only on its *intercity* network. 208/

As made clear in Qwest's initial comments, there is no question that without access to dark fiber, competitors would be impaired in their ability to provide advanced services. 209/ A number of CLEC commenters agree, including ALTS and CompTel. 210/ GSA, a large user, also urges the Commission to make dark fiber a mandatory UNE because "[t]he availability of dark fiber is critical for advanced telecommunications services, because fiber optic facilities provide high transmission capacities at relatively low cost." 211/ In addition, four of the eleven commenting state commissions urge the Commission to include dark fiber in its mandatory UNE list. 212/

The deployment of fiber optic facilities imposes substantial costs, delays, and difficulties on competitors. Thus, just as with loops, switches, and interoffice transport, it is not always possible or economically efficient for CLECs to

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208/ Qwest Comments at 90.

209/ Qwest Comments at 89.

210/ See ALTS at 62-63; CompTel at 32.

211/ GSA at 7.

212/ Illinois Commerce Commission at 11, 15; Oregon Public Utility Commission at 2; Iowa Utilities Board at 9; Texas Public Utility Commission Comments at 15, 17-18 (although Texas suggests some unlawful limitations on the use of the dark fiber UNE). It goes without saying, moreover, that all of these state commissions view dark fiber as a "network element" under Section 153(29) of the 1996 Act. 47 U.S.C. § 153(29).

deploy dark fiber in all the locations necessary to reach the customers they wish to serve. Access to ILEC dark fiber is essential because it would help competitors like Qwest both expand the reach of their networks and bring a full complement of competitively-priced, high-speed, voice, data, and video services to end user customers. Moreover, access to dark fiber would enable CLECs to do so (1) at costs comparable to those of the ILECs and (2) at speeds approaching those of the ILECs. Access to ILEC dark fiber also would enable competitive providers of transport offerings to complete their networks, thereby facilitating the development of a wholesale transport market.

A lack of access to ILEC dark fiber would significantly impair the ability of CLECs to provide a broad base of customers with the advanced, high-speed services that so many customers now demand. The Commission, therefore, should include dark fiber in its list of mandatory ILEC UNEs.

XIII. THE COMMISSION SHOULD REINSTATE RULE 315(C)-(F).

GTE opposes reinstatement of Rule 51.315(c)-(f). 213/ Rule 51.315(c)-(f) required ILECs to combine network elements for a requesting carrier even if they were not ordinarily combined in the ILEC network, so long as such combinations were technically feasible and would not impair others' access to network elements or interconnection. 214/ GTE asserts that the Commission should not reinstate

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213/ GTE Comments at 84-85.

214/ 47 C.F.R. § 51.315(c)-(f).